

HOUSE No. 1603

By Mr. Spellane of Worcester, petition of Robert P. Spellane relative to encouraging competition with respect to workers' compensation insurance rates. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO ENCOURAGING COMPETITION WITH RESPECT TO WORKERS' COMPENSATION INSURANCE RATES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 53A of Chapter 152 is hereby amended by
2 adding the following language immediately preceding subsec-
3 tion (1):

4 Section 53A. For the purposes of this section, the following
5 words shall have the following meanings:

6 "Classification System" or "classification" means a plan,
7 system or arrangement for recognizing differences in exposure to
8 hazard among industries, occupations, or operations of insurance
9 policyholders.

10 "Developed losses" means losses (including loss adjustment
11 expenses) adjusted, using standard actuarial techniques, to elimi-
12 nate the effect of differences between current payment or reserve
13 estimates and those which are anticipated to provide actual ulti-
14 mate loss (including loss adjustment expense) payments.

15 "Experience rating" means a rating procedure utilizing past
16 insurance experience of the individual policyholder to forecast
17 future losses by measuring the policyholder's experience against
18 the loss experience of policyholders in the same classification to
19 produce a prospective premium credit, debit or unity modification.

20 "Expenses" means that portion of any rate attributable to acqui-
21 sition, field supervision, collection expenses, general expenses,
22 taxes, licenses and fees.

23 “Loss Cost Multiplier (“LCM”)” means a provision of a rate or
24 rates, as determined by any particular company or as calculated
25 for the reinsurance pool, for such company’s or pool’s (i) pro-
26 jected expenses, other than loss adjustment expense; (ii) profits;
27 and (iii) variations in loss experience as compared with the loss
28 experience of the industry as a whole, that are associated with
29 writing workers’ compensation and employers’ liability insurance.
30 The LCM shall be expressed as a decimal to be applied equally
31 and uniformly to the prospective loss costs approved by the com-
32 missioner for use by filer, the LCM that will apply to risks in the
33 reinsurance pool will be filed by a rating organization designated
34 by the commissioner of insurance. The LCM will not include
35 assessments collected on behalf of the residual market or to sup-
36 port any trust funds created pursuant to section sixty-five.

37 “Loss Trending” means any procedure for projecting developed
38 losses to the average data of loss for the period during which the
39 policies are to be effective.

40 “Market” means the interaction between buyers and sellers of
41 workers’ compensation insurance within this Commonwealth pur-
42 suant to the provisions of this chapter.

43 “Prospective Loss Cost” means that portion of a rate that does
44 not include provisions for expenses (other than loss adjustment
45 expenses), profit or variations in loss experience; and that is based
46 on historical aggregate losses and loss adjustment expenses
47 adjusted through development to their ultimate value and pro-
48 jected through loss trending to a future point in time.

49 “Pure Premium Rates” means that portion of the rate which
50 represents the loss cost per unit of exposure including loss adjust-
51 ment expense. Insurers shall supply information regarding pure
52 premium data to the designated rating organization.

53 “Rate” or “Rates” shall mean the cost of insurance per exposure
54 unit, whether expressed as a single number or as a product of a
55 prospective loss cost and a loss cost multiplier to account for the
56 treatment of expenses (other than loss adjustment expense), profit
57 and variations in company loss experience, prior to any applica-
58 tion of individual risk variations based on loss or expense consid-
59 erations, and does not include minimum premiums.

60 “Statistical plan” means the plan, system or arrangement used
61 in collection of data.

62 “Supporting information” means any manual or plan of rates,
63 classification system, rating schedule, minimum premium, policy
64 fee, rate rule, rating plan, the experience and judgment of the filer
65 and the experience or data of other insurers or organization relied
66 on by filer, the interpretation of any statistical data relied on by
67 filer, description of methods used in making rates and any other
68 similar information needed to determine the applicable premium
69 for an insured.

70 “Unfairly discriminatory rates” means that rates shall not be
71 unfairly discriminatory if, after allowing for practical limitations,
72 price differentials fail to reflect equitably the difference in
73 expected losses and expenses. A rate of an insurer shall not be
74 deemed unfairly discriminatory because different premiums result
75 for policyholders with like loss exposures but different expenses,
76 or like expenses but different loss exposures, as long as the rate
77 reflects the differences with reasonable accuracy.

1 SECTION 2. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (1), and inserting in place
3 thereof the following:

4 (1) Any insurance company authorized to transact business in
5 this commonwealth under sub clause (b) and (e) of clause Sixth of
6 section forty-seven of chapter one hundred and seventy-five may,
7 except as provided in clause (c) of section fifty-four of said
8 chapter one hundred and seventy-five, insure the payment of the
9 compensation provided for by this chapter, and when any such
10 company insures such payment, it shall file with the commissioner
11 of insurance, or, if it is a member of or subscriber to the desig-
12 nated rating organization under section fifty-two C, authorize such
13 rating organization to file with the commissioner on its behalf its
14 classification of risks and projected loss costs relating thereto.

1 SECTION 3. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (2), and inserting in place
3 thereof the following:

4 (2) The commissioner shall designate a rating organization,
5 duly qualified under section fifty-two C, to file with the commis-
6 sioner of insurance prospective loss costs, experience rating, sta-
7 tistical plan, supporting rate information and classification plan of

8 risks associated with writing workers' compensation and
9 employers' liability insurance in the Commonwealth, both in the
10 voluntary market and in the reinsurance pool established pursuant
11 to section sixty-five C. Said rating organization shall file
12 industry-wide classifications of risks, prospective loss costs, and
13 reinsurance pool LCMs annually, on or before August 31.
14 Prospective loss costs and classifications of risk shall be devel-
15 oped for the entire insured workers' compensation market without
16 regard to whether individual risks are insured in the voluntary
17 market or the reinsurance pool. Individual companies making
18 prospective loss cost filings under this section may restrict their
19 data, analyses and projections to one or more subsets of the
20 Massachusetts market only so long as the data submitted are uni-
21 formly credible and the proposed classifications are consistent
22 with that used by the designating rating organization as set forth
23 below. Representatives of the division of insurance and the state
24 rating bureau may meet with representatives of the designated
25 rating bureau, or representatives of individual insurer that is not a
26 member of the rating organization, in advance of any filing or
27 hearing to discuss and agree upon methodologies to be used in the
28 filing process. Every workers' compensation insurer shall adhere
29 to a uniform classification system, experience rating and statistical
30 plan filed by the designated rating organization and approved by
31 the commissioner. An insurer may file for sub-classifications of
32 the uniform classification system if the insurer can demonstrate in
33 its filing that the data thereby produced can be reported in a
34 manner consistent with the uniform statistical plan and classifica-
35 tion system. The loss cost filing will be effective as of January
36 first of the following year.

37 The commissioner shall have thirty days to review and approve
38 the prospective loss cost filing if, (i) the proposed loss costs fall
39 within a range of reasonableness and are not excessive, inadequate
40 or unfairly discriminatory for the risks to which they apply and
41 (ii) the proposed classifications are reasonable and equitable. If,
42 within thirty days of the filing, the commissioner determines that
43 the filing does not meet the requirements of this section, the com-
44 missioner shall advise the filer of its disapproval of the filing and
45 shall specify, in writing, in what respects the filing fails to meet
46 the requirements of this section. Within fifteen days of the

47 issuance of the written decision, the filer may request a hearing
48 which shall be held within fifteen days. Said hearing must be
49 completed within thirty days of its commencement and a written
50 decision thereon shall be issued within thirty days of the close of
51 the hearing. If, after said hearing, the commissioner disapproves
52 the filing, the reasons for the disapproval shall be specified in the
53 decision. Any projected loss cost filing shall be deemed approved
54 if the commissioner has not done any of the following (i) acted
55 within thirty days of receipt of the prospective loss cost filing,
56 (ii) commenced a hearing within fifteen days of a request for
57 hearing by the filer, (iii) complete the hearing within thirty days of
58 its commencement, or (iii) issue a written decision within thirty
59 days of the close of the hearing. The filer that has made an indi-
60 vidual prospective loss cost filing may seek review of the com-
61 missioner's decision before the Supreme Judicial Court.

62 The commissioner will have forty-five days after rating organi-
63 zation files LCM for the reinsurance pool to review and approve
64 or conduct a hearing of the LCMs for the reinsurance pool. In the
65 case of a LCM filing by the designated rating organization, the
66 commissioner shall also ensure that the proposed LCMs for the
67 reinsurance pool will not lead to rates that are excessive, inade-
68 quate or unfairly discriminatory for the risks to which they apply.
69 If a hearing is held, said hearing must be completed within thirty
70 days of its commencement and the commissioner shall issue a
71 written decision within thirty days of the close of the hearing.
72 The commissioner may approve the use of supporting rate infor-
73 mation, rating plans, deviations, credits or other adjustments
74 which can be applied to the rates and classifications within the
75 reinsurance pool. If the commissioner disapproves any part of the
76 filing, the reasons for the disapproval shall be specified, in
77 writing, in the decision. The rating organization may seek review
78 of the commissioner's decision before the Supreme Judicial Court.
79 The filing shall be deemed approved if the commissioner does not
80 perform any of the following (i) acted within forty-five days of
81 receipt of the LCM filing, (ii) complete the hearing within thirty
82 days of its commencement, or (iii) issue a written decision within
83 thirty days of the close of the hearing. The rates for the residual
84 market will be effective as of January first of the following year.

85 Any subsidy of the reinsurance pool shall be by an assessment
86 on all insured employers in the commonwealth which shall be col-
87 lected by their insurers and remitted to the administrator of the
88 reinsurance pool.

1 SECTION 4. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (4), and inserting in place
3 thereof the following:

4 (4) Subsequent to the approval of an industry-wide prospective
5 loss cost filing, each company that is a member of the bureau duly
6 designated by the commissioner to make such filings, shall submit
7 to the division of insurance LCM filings upon which it desires to
8 use for establishing its workers' compensation rates. Insurers
9 making individual loss cost filing must also make separate filings
10 of their LCMs subsequent to approval of the use of such lost
11 costs. In making LCM filings, due consideration shall be given
12 by an insurer to its past and prospective loss experience within
13 and outside this commonwealth, to catastrophe hazards, to a rea-
14 sonable margin for underwriting profit and contingencies, and to
15 past and prospective expenses both countrywide and those spe-
16 cially applicable to this commonwealth, and to all other relevant
17 factors within and outside this commonwealth, including the expe-
18 rience or judgment of the insurer.

19 An insurance company may adopt by reference any filing
20 approved in accordance with paragraphs (2) above. When an
21 insurer bases its rates upon an approved loss cost filing, its final
22 rates shall be determined by applying loss cost multipliers to the
23 approved loss costs. Companies need not refile LCMs subsequent
24 to any approved changes in prospective loss costs to continue their
25 use. An insurer may file to amend their loss cost multipliers
26 prospectively at any time. Loss cost multipliers shall be effective
27 thirty days after receipt by the division of insurance; provided,
28 that if, after the thirty day review period, the state rating bureau
29 can disapprove a filing if it asserts in writing to the company and
30 the commissioner of insurance that the LCM filing (i) is likely to
31 produce rates or premiums that are inadequate, (ii) would tend to
32 impair or threaten the solvency of the filer, (iii) would likely
33 create a monopoly in the market or (iv) or contains substantive
34 defect in the supporting information. If the state rating bureau dis-

35 approves insurer's LCM filing the insurer can request a hearing to
36 review or hearing of the filing. Said review or hearing shall com-
37 mence within fifteen days of company's request and conclude
38 within fifteen days of the end of review or close of the hearing.
39 The commissioner will have fifteen days to issue a written deci-
40 sion after the end of review or close of the hearing. Insurers shall
41 have the right to appeal any decision of the commissioner of
42 insurance regarding LCMs, except that all such appeals shall be
43 filed with the appeals court of the commonwealth.

44 An insurer's rates shall be in such form and manner so as to
45 enable the commissioner of insurance to determine the premiums
46 the insurer would charge its insureds.

1 SECTION 5. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (5), and inserting in place
3 thereof the following:

4 (5) When any filing is not accompanied by the information
5 upon which the insurer supports such filing, and the commissioner
6 of insurance does not have sufficient information to determine
7 whether such filing meets the requirements of this section, the
8 commissioner may require such insurer to furnish the information
9 upon which it supports such filing.

1 SECTION 6. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (6):

1 SECTION 7. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (7), and inserting in place
3 thereof the following:

4 (7) The commissioner of insurance shall, by the use of experi-
5 ence rating credits, the institution of a payroll cap on premium
6 computation, or other method, provide for equitable distribution
7 of premiums among employers paying higher than average wages
8 and those paying lower than average wages.

1 SECTION 9. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (8), and inserting in place
3 thereof the following:

4 (8) Rates shall not be excessive, inadequate, or unfairly dis-
5 criminatory for the risks to which they apply, and within a range
6 of reasonableness. Due consideration shall be given by an
7 insurers past and prospective loss experience within and outside
8 this commonwealth, to catastrophe hazards, if any, to a reasonable
9 margin for underwriting profit and contingencies, and to past and
10 prospective expense both countrywide and those specially applic-
11 able to this commonwealth, and to all other relevant factors within
12 and outside this commonwealth, including the experience or judg-
13 ment of the insurer.

1 SECTION 10. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (9), and inserting in place
3 thereof the following:

4 (9) (a) The advisory council, established pursuant to section fif-
5 teen of chapter twenty-three E may request without limitation any
6 loss data, from any insurance company or rating organization.
7 Any insurance company or rating organization which is the recip-
8 ient of such a request may, if it believes that the request is unduly
9 burdensome or unreasonable, file a motion to be heard by the
10 commissioner of insurance concerning whether all or part of the
11 request requires response. The commissioner of insurance may, if
12 commissioner so finds that the request is unduly burdensome or
13 unreasonable, deny the request in whole or in part.

14 (b) At any hearing conducted pursuant to this section, the advi-
15 sory council may present a written statement and oral testimony
16 relating to any issues which may arise during the course of the
17 hearing. Said advisory council may not cross-examine witnesses
18 produced by other parties, or appeal any decision of the commis-
19 sioner.

1 SECTION 11. Section 65A of Chapter 152 is hereby amended
2 by inserting after the first sentence of subsection (1) the
3 following:

4 The rejection of a retrospective rating plan proposal by the
5 insured shall be considered a rejection of voluntary coverage for
6 purposes of this section.

1 SECTION 12. Section 65C of Chapter 152 is hereby amended
2 by striking out subsection (2)(g).

1 SECTION 13. Section 65 of Chapter 152 is hereby further
2 amended by striking out subsection (5), and inserting in place
3 thereof the following:—

4 (5) Each self-insurance group shall pay to the treasurer of the
5 commonwealth a sum assessed by the department equal to the
6 product of its pure premium and the assessment rates determined
7 pursuant to subsection (4), multiplied by the total base amount for
8 all self-insured groups divided by the estimated total pure pre-
9 miums for all self-insured groups for the next twelve-month
10 period beginning January first and ending on the last day of
11 December. For each insured employer, the assessment shall be
12 equal to the product of its workers' compensation pure premium
13 and the assessment rate determined pursuant to subsection (4),
14 multiplied by the ratio of the aggregate base amount for all
15 insured employers as reported pursuant to subsection (3), to the
16 aggregate estimated pure premium for these said employers for
17 the next twelve-month period beginning January first and ending
18 on the last day of December. Such aggregate estimated pure pre-
19 miums shall be based on currently applicable loss cost as
20 approved by the commissioner of insurance. The rating bureau
21 shall compute said ratio and submit it to the division of industrial
22 accidents by May first of each year for review and approval.
23 Insurers shall bill and collect assessments on insured employers.
24 Such assessments shall be separately stated amounts on all pre-
25 mium notices, and shall not be reported as premiums for any tax
26 or regulatory purposes under chapter sixty-three, one hundred and
27 seventy-five, or any other law. Assessment rates for insured
28 employers shall apply to policy years beginning on or after July
29 first following the determination of prospective loss cost. The
30 assessment for each self-insurer shall be equal to the product of
31 the assessment rate and the self-insurer's pure premium multiplied
32 by the total base amount for all self-insurers, divided by the total
33 pure premium for all self-insurers as determined by the depart-
34 ment. Insurers shall transmit assessments collected during each
35 quarter, and self-insurers and self-insurance groups shall pay
36 assessments due each quarter, to the state treasurer no later than
37 one month after the end of the quarter.

1 SECTION 14. Chapter 152 of the General Laws is hereby
2 amended by striking out section 53 and inserting in place thereof
3 the following new section:

4 Section 53. Any insurance company authorized to do business
5 in this commonwealth may, with notice to the commissioner of
6 insurance, distribute its risks into groups in accordance with the
7 nature of the business and the degree of the liability of injury and
8 such company may fix by and for such groups in accordance with
9 the experience of each group all premiums, assessments and divi-
10 dends; but all the funds of the company both actual and contingent
11 shall be available for the payment of any claim against the com-
12 pany.

1 SECTION 15. In January of any year in which either the
2 Herfindahl-Hirshman Concentration Index of market concentra-
3 tion index rose above 1,500 during the prior year or after the con-
4 sideration of all of the following reasons: (i) The extent to which
5 the largest insurer groups control the insurance marketplace. A
6 specific insurance market shall be considered competitive, from
7 the standpoint of market concentration, so long as, measured by
8 premium volume, the cumulative share of the market controlled
9 by the four (4) largest insurer groups in the specific market does
10 not exceed fifty percent (50%). If the fifty percent (50%)
11 threshold is surpassed, other measures of concentration, such as
12 the Herfindahl-Hirshman Concentration Index, should also be
13 considered, on the basis of both premium volume and policy
14 counts, in determining the extent to which market concentration
15 may be limiting market competition, (ii) Whether the total number
16 of companies writing the form of insurance in this state is suffi-
17 cient to provide multiple options to the public, (iii) The extent to
18 which insurer entries and exits, considered over several years,
19 suggest the presence or lack of entry or exit barriers or both,
20 (iv) The degree to which the insurance products offered to con-
21 sumers are homogenous in nature and, thus, comparable, (v) The
22 availability of insurance coverage in all geographic areas. A
23 review of changes in residual market shares, if applicable, may be
24 used as an indication of availability, (vi) The overall rate level
25 which is not excessive, inadequate or unfairly discriminatory,
26 (vii) The profitability of each form of insurance over a period of

27 several years, (viii) The level of knowledge of market participants
28 and the extent to which comparative pricing information has been
29 made readily available to consumers, (ix) The extent to which the
30 market for each type of insurance is growing, (x) The presence of
31 conditions indicating reverse competition, and (xi) Any other fac-
32 tors the commissioner considers relevant, believes either that
33 competition may have been insufficient to protect consumer inter-
34 ests or may have been conducted in a manner that was either detri-
35 mental to a healthy competitive market or to quality workers'
36 compensation insurance products being offered widely in a non-
37 discriminatory manner at reasonable prices, the commissioner
38 may hold a hearing on workers' compensation market competi-
39 tion. If, however, the primary determinant of non-competitiveness
40 is solely a function of either the residual market pool's contribu-
41 tion to the Hirsch-Herfindahl-Hirshman Concentration Index of
42 more than 30% or a significant change in the residual market load
43 borne by voluntary market carriers, the Commissioner shall not be
44 required to hold a market competition hearing, but may instead
45 address the matter through an adjustment to the Pool profit and
46 contingency multiplier at the next loss cost proceeding. Decisions
47 on any market competition hearing held pursuant to this section
48 shall be issued no later than February 15th of the year in which
49 such hearing is held. If the Commissioner finds, based on clear
50 and convincing evidence produced at such hearing, both that com-
51 petition as allowed by this section has not sufficiently protected
52 both broad industry and consumer interests during the prior year
53 and that administered pricing would better serve such interests,
54 the commissioner shall order that the rating bureau designated to
55 file LCMs under this section to instead file overall rates on behalf
56 of the entire industry on each of their next two filing dates. In
57 such instances, all companies shall be required to utilize only
58 approved industry-wide rates during each of the next two rate
59 years. The hearings on such bureau rate filings shall be conducted
60 within the same time frames as those set forth for prospective loss
61 cost filings in this chapter. After such two-year period, prices
62 shall again be determined through the use of prospective loss cost
63 filings and company LCMs as set forth herein. Market competi-
64 tion hearings under this section shall not be held during any year
65 following the issuance of an industry-wide rate approval.

1 SECTION 16. This act shall apply to all new and renewal
2 workers' compensation policies to be effective on or after January
3 1, 2006; provided, however, that rate and classifications in effect
4 prior to that date shall remain in effect thereafter until new rates
5 and classifications become effective pursuant to the provisions of
6 this act.